

Comparative Perspectives on the Office of Chief Justice

J. Clifford Wallace

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Comparative Perspectives on the Office of Chief Justice

The Honorable J. Clifford Wallace†

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Introduction

Those who seek to understand the Chief Justice's role in the federal judicial system of the United States will find little enlightenment in the Constitution. The words "Chief Justice" appear only once in the Constitution's text—not in Article III, which delineates judicial powers, but in Article I, which governs legislative powers—in the clause that assigns the role of presiding authority over presidential impeachments.¹ Aside from this singular duty, the Constitution "envelops the office of Chief Justice with silence."²

As a result, the office of Chief Justice has developed over time in a manner not unlike the common law itself, drawing on inherited institutional traditions, but adapting to changing needs through the incremental accretion of precedent. Currently, the Chief Justice's duties include such various activities as presiding over hearings and conferences of the Supreme Court; leading the Judicial Conference of the United States;³

† Senior Judge and former Chief Judge, United States Court of Appeals for the Ninth Circuit. The views expressed in this article are the Author's alone and do not necessarily reflect those of the court as a whole. The Author wishes to express his gratitude to participants in the Conference of Chief Judges of Asia and the Pacific, who participated in the survey upon which this article is based. He also expresses his sincere appreciation to Yvette Golan, Esq., and Evan Criddle, Esq., for their effective assistance with this article.

1. See U.S. CONST. art. I, § 3, cl. 6 ("When the President of the United States is tried [for impeachment], the Chief Justice shall preside . . .")

2. Peter G. Fish, *The Office of Chief Justice of the United States: Into the Federal Judiciary's Bicentennial Decade*, in *THE OFFICE OF CHIEF JUSTICE* 1, 9 (The White Burkett Miller Ctr. of Public Affairs, Univ. of Va. 1984).

3. 28 U.S.C. § 331 (2000).

reporting new procedural, evidentiary, and bankruptcy rules to Congress;⁴ approving both rules made by the Supreme Court librarian⁵ and final decisions concerning the architectural design of the Thurgood Marshall Federal Judiciary Building;⁶ maintaining a roster of retired federal judges "who are willing and able to undertake special judicial duties . . . outside their own circuit";⁷ appointing judges to the National Historical Publications Commission;⁸ assigning Article III judges to serve as temporary district court judges in the Territory of Guam, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands ("Northern Mariana Islands");⁹ and serving as a Member and Regent of the Smithsonian Institution and as a Trustee of the National Gallery of Art and the Joseph H. Hirshhorn Museum and Sculpture Garden.¹⁰ Because few of these responsibilities are written in stone (and only one in the Constitution), the office continues to evolve in relative obscurity under a variety of pressures, not the least of which are the idiosyncratic visions of and revisions by individual Chief Justices.¹¹

Interestingly, the United States' experience is not unique in this respect; most foreign constitutions and codes contain similarly vacuous references to their highest judicial officer. For example, the constitutions of Australia and the People's Republic of China ("China") each provide for a Chief Justice to preside over its court of last resort, but neither document details the Chief Justice's specific role and responsibilities.¹² Subject to modest statutory restrictions, most Chief Justices exercise considerable discretion in apportioning their time among adjudication, administration, and other functions. Internationally, the office of Chief Justice remains very much a "work-in-progress," just as it is in the United States.

The downside to this evolutionary process is that Chief Justices ordinarily have access to only one model for the office—the example of their immediate predecessors. Not all models for the office of Chief Justice are created equal. In some countries, inherited traditions may perpetuate failed programs or antiquated procedures. Even workable models can limit progress if Chief Justices fail to entertain new ideas and consider success-

4. 28 U.S.C. §§ 2072, 2074-2075 (2000).

5. 28 U.S.C. § 674(b) (2000); SUP. CT. R. 2.

6. 40 U.S.C.A. § 6502(d) (West Supp. 2004).

7. 28 U.S.C. § 294(d) (2000).

8. 44 U.S.C. § 2501(a)(1)(E) (2000).

9. 48 U.S.C. §§ 1424b(a), 1614(a), 1821(b)(2) (2002).

10. 20 U.S.C. §§ 41, 42, 72, 76cc(b) (2000). For a complete list of the Chief Justice's statutory duties as of 1979, see Fish, *supra* note 2, at 229-32.

11. As Professor Alpheus T. Mason has observed:

No one function, nor all combined, suffice to explain the office and power of the Chief Justice. Besides the functions themselves, the incumbent's influence depends on the use he makes of them and the manner in which they are discharged. Beyond all this is the human factor, the intangibles, the personality—the moral energy the man at the center releases.

Fish, *supra* note 2, at 15 (quoting Alpheus Thomas Mason, *The Chief Justice of the United States: Primus Inter Pares*, 17 J. PUB. L. 20, 60 (1968)).

12. AUSTR. CONST. ch. III, art. 71 (1986); P.R.C. CONST. ch. III, § I, arts. 62(7), 63(4), 67(11); § VII, art. 124 (1982).

ful practices implemented in other countries, which might allow them to improve on their predecessors' examples.

Until relatively recently, national Chief Justices could rarely compare notes on their respective activities. Advances in transportation and communication technologies now permit Chief Justices to meet face-to-face and maintain regular contact—creating unprecedented opportunities for global cooperation and collaboration. I have witnessed this trend firsthand as a member of the Judicial Conference of the United States International Judicial Relations Committee and as an enthusiastic advocate and participant in the globalization of judicial education.¹³ For more than two decades, I have labored with judicial leaders and educators worldwide to develop fora where Chief Justices can gather to receive training and share ideas. Such international and regional conferences provide invaluable opportunities for Chief Justices to obtain information on global developments in judicial administration and to be exposed to alternative solutions to problems, thus helping them to broaden their views beyond parochial judicial traditions.

One of the major challenges judicial educators face in designing programs for Chief Justices is the paucity of scholarly research on the duties and activities of Chief Justices in various countries. To date, no significant comparative study has been conducted on the scope of Chief Justices' authority or of their nonadjudicatory functions. In June 2003, I attempted to address this lacuna by conducting an informal survey at the Conference of Chief Justices of Asia and the Pacific. Collectively, the Chief Justices at this Conference have jurisdiction over two-thirds of the world's population. The survey questions explore a range of issues, including the Chief Justices' prior judicial experience; the composition of the Chief Justices' courts; the Chief Justices' oversight authority vis-à-vis associate justices and lower courts; and the Chief Justices' role in judicial training, discipline, judicial administration, communications with the media, and relations with the executive, legislature, and bar. Although by no means exhaustive, the responses of the Chief Justices cast light on the professional activities of Chief Justices throughout Asia and the Pacific and provide a variety of valuable insights to aid the education of future Chief Justices.

This Article begins in Part I by distinguishing and contextualizing three key movements in global judicial education: information transmission, training, and peer exchange. Part II presents a general overview of the survey data, highlighting a variety of commonalities and divergences in the Chief Justices' responses. In Part III, I consider the data's significance for the globalization of Chief Justice education and argue that Chief Justices are likely to benefit more from global education programs that employ a peer-exchange method rather than from a "training" approach.

13. See The Honorable J. Clifford Wallace, *Globalization of Judicial Education*, 28 YALE J. INT'L L. 355, 360-61 (2003) (contending that judicial education programs should globalize to meet the demands of the increasingly international legal community).

I. Judicial Globalization and the Office of Chief Justice

The last several years have witnessed a swelling of scholarly attention toward "judicial globalization"—the "diverse and messy process of judicial interaction across, above, and below borders, exchanging ideas and cooperating in cases involving national as much as international law."¹⁴ As Professor Anne-Marie Slaughter observed, transjurisdictional interactions take place in a variety of contexts and on a variety of levels, "involving both 'vertical' relations between national and international tribunals and 'horizontal' relations across national borders."¹⁵ Although commentators typically characterize judicial globalization as a reaction to exogenous forces such as the globalization of transactions, the worldwide emphasis on human rights norms since World War II, and the tendency toward international convergence of certain areas of the law,¹⁶ this is only half of the story. As Supreme Court Justice Sandra Day O'Connor has stressed, judicial globalization also represents a fundamental shift in judges' perceptions of their own role: "Globalization . . . represents a greater awareness of, and access to, peoples and places far different from our own. The fates of nations are more closely intertwined than ever before and we are more acutely aware of the connections we have with others."¹⁷

The area of judicial globalization that has probably received the most attention is the cross-fertilization of constitutional norms. Transjudicialism is not a new phenomenon. Where appropriate, some courts in the United States have sought ideas and new approaches from the decisions of foreign courts, just as foreign courts have borrowed heavily from American jurisprudence.¹⁸ The frequency and intensity of this international dialogue, however, has increased dramatically over the past fifteen years, as courts around the world grapple with issues arising out of a globalizing market for resources, ideas, and information. Debates over divisive social issues increasingly play out on the international stage and are framed for

14. Anne-Marie Slaughter, *Judicial Globalization*, 40 VA. J. INT'L L. 1103, 1104 (2000).

15. *Id.*

16. Prof. Dr. Carl Baudenbacher, *Judicial Globalization: New Development or Old Wine in New Bottles?*, 38 TEX. INT'L L.J. 505, 506 (2003); Wallace, *supra* note 13, at 360.

17. The Honorable J. Sandra Day O'Connor, Keynote Address, in 96 AM. SOC'Y INT'L L. PROC. 348, 349 (2002).

18. JOHN HENRY MERRYMAN & DAVID S. CLARK, *COMPARATIVE LAW: WESTERN EUROPEAN AND LATIN AMERICAN LEGAL SYSTEMS* 1 (1978) ("From ancient times . . . those wishing to establish a just legal system have sought inspiration and example from other lands."); The Honorable Claire L'Heureux-Dubé, *The Importance of Dialogue: Globalization and the International Impact of the Rehnquist Court*, 34 TULSA L.J. 15, 19 (1998) ("In elaborating the rights and freedoms in the [Canadian Charter of Rights and Freedoms, the Supreme Court of Canada] frequently has turned to American jurisprudence on the Bill of Rights."); Anthony Lester, *The Overseas Trade in the American Bill of Rights*, 88 COLUM. L. REV. 537, 541 (1988) ("When life or liberty is at stake, the landmark judgments of the Supreme Court of the United States . . . are studied with as much attention in New Delhi or Strasbourg as they are in Washington, D.C., or the State of Washington . . ."); Slaughter, *supra* note 14, at 1116 ("Legal cross-fertilization generally is . . . not new, particularly among imperial powers and their colonies. . . . Plenty of evidence can be . . . found in 19th century U.S. and federal reports.") (internal footnote omitted).

decision before judges in different jurisdictions at the same time.¹⁹ As evinced by the Supreme Court decision in *Lawrence v. Texas*,²⁰ courts in the United States are showing an interest in considering the jurisprudence of other national and international courts as persuasive authority for resolving issues of global interest.²¹

Less heralded than international substantive law are the increasing face-to-face discussions between justices and judges at international and regional gatherings. Significantly, Chief Justices now participate in an array of international and regional associations such as the Conference of Chief Justices of Asia and the Pacific, the Organization of Supreme Courts of the Americas ("O.S.C.A."), the Conference of Chief Justices of Africa, the South Pacific Judicial Conference, the Pacific Judicial Council, the International Common Law Conference, the Commonwealth Law Conference, the South Asian Association for Regional Cooperation in Law ("SAARCLAW"), the Asian Law Conference, and the International Judicial Conference. Nongovernmental organizations such as the Law Association for Asia and the Pacific ("LAWASIA") and the American Bar Association's Central and Eastern European Law Initiative ("C.E.E.L.I.") arrange meetings among judges from different countries to facilitate law reform and judicial training.²² Educational institutions such as Yale Law School and New York University Law School have hosted conferences to facilitate discussion among justices from national and international tribunals.²³ As the forces of globalization give rise to unprecedented political, economic, and cultural interchange, so too have they made possible a dramatic increase in the face-to-face contacts of judges from various parts of the world.

I stated earlier that conferences of judicial leaders are less heralded than the sister aspect of judicial globalization dealing with comparative substantive law. This is not surprising. Comparative substantive law has always been the headline and comparative judicial administration a mere footnote. Comparative approaches to judicial administration have gained an increasing number of adherents, however, as it has become clear that how a judiciary functions is just as important as the legal doctrines it articulates. After all, no legal right is enforceable without a functioning court to enforce it. Thus, making the court system effective, the task of judicial administration should stand on equal footing with the law it produces. Since Chief Justices play a pivotal leadership role in judicial administration, regional and international conferences of Chief Justices are an indispensable opportunity to make judicial systems more effective.

19. L'Heureux-Dubé, *supra* note 18, at 23.

20. 539 U.S. 558 (2003).

21. *Id.* at 577 ("The right the petitioners seek in this case has been accepted as an integral part of human freedom in many other countries. There has been no showing that in this country the governmental interest in circumscribing personal choice is somehow more legitimate or urgent."); see also Anne-Marie Slaughter, *A Global Community of Courts*, 44 HARV. INT'L L.J. 191, 199-202 (2003) (discussing the use of foreign precedents as "persuasive authority").

22. Slaughter, *supra* note 21, at 216 n.130.

23. *Id.*

So far, the international community has embraced the flowering of judicial education with a generous outpouring of resources and enthusiasm. But because international conferences of leaders are a relatively new development, organizers still struggle to devise curricula and activities that maximize the judges' limited time and resources. This difficulty is particularly acute for international and regional conferences of Chief Justices. It is axiomatic that conference organizers are most successful when they tailor their methodology to an individual student's needs, and this principle applies equally well to judicial education. Yet the scope of Chief Justices' authority and activities outside the courtroom remain relatively obscure everywhere, creating significant roadblocks to the development of effective international conferences and education programs.

To ensure that future international and regional programs for Chief Justices will be productive, we need to answer two questions. First, what functions do Chief Justices perform? Second, how can conference organizers and judicial educators best assist Chief Justices in performing these functions?

II. Surveying the Office of Chief Justice

At the 2001 Conference of the Chief Justices of Asia and the Pacific, the assembled Chief Justices expressed an interest in exchanging information on how each carries out his or her responsibilities. To facilitate this proposal, I distributed an informal survey in April 2003.²⁴ I have since received completed questionnaires from the Chief Justices of twenty-seven countries: Australia, the People's Republic of Bangladesh ("Bangladesh"), the Union of Myanmar ("Myanmar"), the Kingdom of Cambodia ("Cambodia"), China, the Republic of the Fiji Islands ("Fiji"), the Hong Kong Special Administrative Region ("Hong Kong"), the Republic of India ("India"), the Republic of Indonesia ("Indonesia"), Japan, the Republic of Kiribati ("Kiribati"), the Macau Special Administrative Region ("Macau"), the Republic of the Marshall Islands ("Marshall Islands"), the Federated States of Micronesia, Mongolia, the Republic of Nauru ("Nauru"), the Kingdom of Nepal ("Nepal"), New Zealand, the Northern Mariana Islands, the Republic of the Philippines ("Philippines"), the Independent State of Samoa ("Samoa"), the Republic of Seychelles ("Seychelles"), the Republic of Singapore ("Singapore"), the Solomon Islands, the Republic of Korea ("South Korea"), the Kingdom of Thailand ("Thailand"), and the Kingdom of Tonga ("Tonga").²⁵ The Chief Justices' responses are provided in abbreviated form in Appendices 3 through 8.²⁶

Professional pollsters will undoubtedly detect flaws in the survey, and I accept full responsibility for any imperfections in its methodology or

24. The survey questions are listed in Appendix 1.

25. The Chief Justices of the Republic of Kazakhstan, the Islamic Republic of Pakistan, the Russian Federation, and the Socialist Republic of Vietnam also submitted incomplete questionnaires, which I have omitted from this study.

26. The Appendices also incorporate responses from a brief follow-up survey, which was requested by several Chief Justices and distributed in January 2004.

presentation. The survey's scope and purpose are limited. First, it considers a set of geographically linked countries in Asia and the Pacific, which is not necessarily a representative sample of the world's judicial systems as a whole (despite the fact that they contain two-thirds of the world's population and include both common law and civil law systems). Second, the survey does not purport to canvass the entire field of the Chief Justices' professional activities. Nevertheless, incomplete and provisional though it may be, the survey is the first and only of its kind, and its results should be of great interest to Chief Justices, comparativist scholars, and others engaged in the perplexities of judicial globalization.

A. Chief Justices and Their Courts

All twenty-seven of the countries surveyed select their Chief Justice by appointment pursuant to a constitutional or statutory mandate.²⁷ The vast majority entrust this decision directly to the chief executive, the legislature, a special committee, or some combination of the three. Notable exceptions are India and Thailand, which employ a seniority system, and Mongolia, which invites its eleven justices to select their own leader.²⁸

Relatively few of the Chief Justices polled had substantial experience on the highest court before their appointments. Only seven had served as associate justices for more than two years, and over half had no prior experience on the highest court at all.²⁹ Equally rare were formal training programs for Chief Justices; none of the respondents were trained prior to appointment, and only a handful had received formal on-the-job training. Most of the Chief Justices believe that more training for the office of Chief Justice would be helpful, particularly in areas outside the scope of traditional judge and lawyer practice such as appellate case management, judicial administration, and budgetary planning.

Aside from China and Thailand, which have, respectively, 330 and 85 judges on their supreme courts, most highest courts in the survey sample are of modest size, ranging from one (the Marshall Islands and Nauru) to twenty-six justices (India).³⁰ Fifteen of the twenty-seven countries surveyed have ten or fewer justices on their highest courts.³¹ Nearly all of the Chief Justices indicated that they have an interest in, and a continuing obligation to, the welfare and development of their judicial colleagues.³²

27. See *infra* Appendix 3.

28. In the United States, Chief Justices of state and territorial supreme courts are selected in one of four ways: direct appointment or election to the office of Chief Justice, election by members of the Supreme Court, longevity, or rotation. See James Duke Cameron et al., *The Chief Justice and the Court Administrator: The Evolving Relationship*, 113 F.R.D. 439, 447-48 (1987).

29. See *infra* Appendix 3.

30. *Id.*

31. *Id.*

32. *Id.*

B. Oversight Authority

As the presiding authority and “manager” of the highest courts, Chief Justices bear a special burden to ensure the efficient and professional administration of justice. Chief Justices preside over their courts in public proceedings as well as in closed conferences and, in addition, play a significant role in the court’s deliberations. In all but eight of the twenty-seven countries polled, the Chief Justices also determine the distribution of cases among their associates on the court.³³ Roughly half of the Chief Justices are assigned the same number of cases as their colleagues.³⁴

Although Chief Justices generally take an active interest in the timely disposition of cases, their authority to influence the expeditious decision of particular cases varies from country to country. Most Chief Justices encourage their associates through private dialogue or informal discussion during court meetings, but a few wield a bigger stick. In China, for example, justices on the Supreme People’s Court labor under a statutory time limit supervised by the Chief Justice.³⁵ For Thailand’s cadre of 85 justices, delinquency in completing assigned dispositions can lead to disciplinary action at the Chief Justice’s behest. The Marshall Islands’ lone justice—a part-time position—also faces coercive pressures to deliver prompt decisions; failure to satisfy a forty-five-day statutory deadline results in a withholding of pay for the case until the case is decided.³⁶

The Chief Justices handle their disputes with associate justices over non-case-related issues in different ways. In Myanmar, China, Hong Kong, India, Kiribati, and Singapore, the Chief Justice has virtually plenary authority to decide all non-case-related disputes.³⁷ Other countries refer such matters to an independent council or mediator. The vast majority, however, lack formal procedures for resolving such disputes between justices and rely on the justices themselves to resolve their disagreements amicably through private discussion or, when necessary, collective deliberation.

Aside from their appellate function, relatively few of the Chief Justices that responded to the survey exercise direct supervisory authority over subordinate courts, and none is empowered to intervene directly in cases before the lower courts. Most report that their oversight function over lower courts is limited to administrative matters such as court finances, personnel, and procedural rules.³⁸ The majority also indicates that the organization of judicial training and education programs falls within the duties of the Chief Justice.³⁹ Nearly half of the Chief Justices surveyed have the power to transfer lower court judges, but most cannot do so without first consulting with the affected judge and seeking the approval of an

33. See *infra* Appendix 5.

34. See *infra* Appendix 6.

35. See *infra* Appendix 5.

36. *Id.*

37. *Id.*

38. See *infra* Appendix 5, 6.

39. See *infra* Appendix 4.

executive, legislative, or auxiliary judicial body.⁴⁰

All but four of the Chief Justices surveyed report that their countries have, or very soon will have, a published code of judicial conduct.⁴¹ A majority play a role in disciplinary proceedings for judges other than themselves, the exceptions being the Chief Justices of Australia, Indonesia, the Marshall Islands, New Zealand, and Seychelles.⁴² Nine of the Chief Justices surveyed—Myanmar, Cambodia, Japan, Macau, Nepal, Thailand, the Northern Mariana Islands, Samoa, and Singapore—either preside over their national disciplinary council or have independent power to discipline judges who transgress their code of judicial conduct.⁴³ Others organize ad hoc disciplinary councils, refer offenders for disciplinary measures, or play key advisory roles during judicial disciplinary procedures. Sanctions imposed for misconduct range from salary reductions (Singapore) to transfers to remote locations (Nepal) and impeachment (Japan).⁴⁴

C. Administrative Activities

Each of the Chief Justices surveyed spends a considerable portion of his or her time tending to administrative duties. Nineteen stated that court administration claims at least a quarter of their time; ten placed the percentage at fifty percent or higher. Fiji's Chief Justice reported he spends 90 percent of his time on administrative duties.⁴⁵ Most of the respondents hold regular meetings to discuss ongoing administrative issues and engage in strategic planning, but the frequency of these meetings varies significantly. For example, while Chief Justices in Indonesia, Nepal, and the Northern Mariana Islands hold meetings on administrative issues as frequently as twice a month, Singapore's Chief Justice conducts only one or two meetings each year.⁴⁶

All but two of the countries surveyed (Cambodia and Samoa) employ a full-time judicial administrator, and most also maintain standing committees, which oversee various aspects of judicial administration.⁴⁷ Keeping abreast of these committee activities can be a major undertaking in itself—particularly in South Korea, which maintains thirty-four separate committees under the Supreme Court.⁴⁸ Some countries, including Australia, ease this burden on the Chief Justice by distributing the responsibility for judicial administration among all of its justices. Nearly all of the Chief Justices are responsible for the preparation of an annual statistical report, which is

40. See *infra* Appendix 5.

41. See *infra* Appendix 8.

42. *Id.*

43. *Id.*

44. *Id.*

45. See *infra* Appendix 6.

46. *Id.*

47. *Id.*

48. *Id.* Examples include the Judges Personnel Committee, Judges Appointment and Review Committee, Judges Disciplinary Committee, Court Officials Disciplinary Committee, Civil Servants Ethics Committee of the Supreme Court, and Committee of Code of Conduct for Judges.

distributed to the other branches of government and the media.⁴⁹

In fiscal matters, some Chief Justices wield more authority than others. The Chief Justice of Indonesia reports that he has "no power" over budget appropriations for the Supreme Court or lower courts; rather the Minister of Justice and the legislature allocate these funds.⁵⁰ Chief Justices in New Zealand and the Solomon Islands also play no role in budget matters.⁵¹ More commonly, however, Chief Justices supervise the drafting of the proposed budgets and submit them to the government. Chief Justices in Nauru and the Northern Mariana Islands also negotiate with and lobby government officials to ensure that the judiciary will receive adequate funding to cover its budgetary projections. Once budget money enters the judiciary's accounts, most Chief Justices play a general supervisory role in ensuring that the funds are spent prudently.

Other administrative functions assumed by some Chief Justices in the survey sample include case distribution and scheduling; procedural rulemaking; judicial appointments and promotions; admission ceremonies for new attorneys; managing the judiciary's personnel, transportation, security, and physical facilities; enhancing technological capabilities; supervising court registries; developing national judicial training and education programs;⁵² supervising judicial publications; handling disciplinary requests and media inquiries; and attending to general correspondence.⁵³ Although an administrative staff typically aids Chief Justices in performing these tasks, Chief Justices are "victim[s] of one of the oldest rules of management: that an executive may delegate authority but not responsibility."⁵⁴

D. Representing the Judiciary

In addition to their casework and judicial administrative functions, most Chief Justices play an important symbolic and representational role as the judiciary's chief officer. In many countries, this unique position of visibility entails a corresponding duty to represent the judiciary at official functions, speak out in public fora on issues affecting the judiciary, address public grievances about the judicial system, and safeguard respectful relations with other branches of government.⁵⁵ These activities foster public confidence in the judiciary and promote judicial independence.⁵⁶

Just over half of the Chief Justices in the survey communicate with the media either directly or through a designated communications officer. Of

49. See *infra* Appendix 6.

50. *Id.*

51. *Id.*

52. See generally The Honorable J. Clifford Wallace, *Judicial Education and Training in Asia and the Pacific*, 21 MICH. J. INT'L L. 849, 852 (2000) (discussing judicial education and training in several of the countries surveyed).

53. See *infra* Appendix 7.

54. Cameron, *supra* note 28, at 449.

55. See *infra* Appendix 7.

56. See David K. Malcolm, *The Role and Responsibilities of a Chief Justice*, Ninth Conference of Chief Justices of Asia and the Pacific 8-10 (Oct. 4, 2001).

these, four report that they may announce policy decisions without securing prior approval from associate justices, the ministry of justice, or an independent judicial committee.⁵⁷ Some Chief Justices regularly make public addresses and issue press releases on behalf of their supreme court or the judiciary as a whole. Hong Kong's Chief Justice, for example, delivers an annual address on the state of the judiciary to media representatives.⁵⁸ Other Chief Justices do not claim to represent the judiciary and shun contact with the public outside of the courtroom.

The survey results are also mixed with respect to Chief Justices' interactions with the other political branches and the bar. Twenty of the twenty-seven respondents indicated that they meet with the executive branch, eighteen meet with the legislative branch, and twenty meet with the bar.⁵⁹ The Chief Justices of China and Hong Kong noted that some of these meetings take place through intermediaries.⁶⁰ Some Chief Justices hold regular meetings with officers of the other political branches and the bar; for others, these meetings are few and far between.

E. Searching for Patterns

Although the survey data provide only a general overview of the duties performed by Chief Justices in Asia and the Pacific, several features of the data merit comment. First, the responses confirm conventional wisdom that, by and large, Chief Justices encounter similar challenges and perform analogous functions in their respective judiciaries. Chief Justices from Asia and the Pacific take office by either direct or indirect appointment and generally receive little or no significant training for their new responsibilities. They preside over the highest court and have a special responsibility to preserve harmonious relations among associate justices and to ensure the timely disposition of cases. Virtually all play some role, whether formally or informally, in overseeing judicial administration and finances, as well as in defending the judiciary's independence. As the judiciary's titular head, they each bear a unique responsibility to strengthen the court as an institution and to promote the rule of law.

Second, despite these common concerns and purposes, the actual tasks performed by Chief Justices vary dramatically from country to country. Some Chief Justices exert considerable supervisory and disciplinary authority over lower court judges; others have no role in these matters. Some spend most of their time on court administration; others give little attention to these issues. The frequency with which Chief Justices announce policy decisions and interface personally with the media varies dramatically as well. Some of these differences among countries probably reflect the particular respondent's personality and leadership style rather than systemic country differences. It has been my experience, for instance, that a Chief Justice's attention to case management, judicial training, and

57. See *infra* Appendix 7.

58. *Id.*

59. *Id.*

60. *Id.*

related reforms usually has less to do with that Chief Justice's formal authority than with his or her will, resources, and imagination. In fairness, however, many differences in the survey responses can be attributed to legal restrictions, as the survey responses also reveal significant differentiation in the functions Chief Justices are authorized to perform within their judicial systems.

Third, perhaps the most intriguing feature of the survey data is its resistance to generalizations. In a previous survey, I found that the size of judiciaries manifested a strong correlation with the development of their judicial education programs.⁶¹ No such correlation is evident, however, between judiciaries' size and Chief Justices' duties. For instance, many Chief Justices of small courts spend an extraordinary amount of time on administrative matters, while others of similar size spend little time. The same is true of large courts and intermediate-sized courts. Likewise, the size of a country's judiciary as a whole does not appear to have a strong correlation with the Chief Justice's participation in disciplinary matters, the scope of the Chief Justice's oversight authority over lower courts, or the extent of the Chief Justice's role in public relations.

Nor do other standard classifications provide a satisfactory explanation for the diverse survey data. Some general commonalities might be perceptible within the common law and civil law traditions, but here, too, the data are equivocal at best. For every common law Chief Justice who purports to exercise supervisory authority over lower courts (e.g., Fiji, the Federated States of Micronesia, New Zealand, Northern Mariana Islands), there is another common law Chief Justice who has no supervisory authority at all (e.g., Australia, the Marshall Islands, Singapore).⁶² The types of activities Chief Justices pursue and the amount of time they devote to these activities appear to have, at most, a mild correlation to factors such as geography; political ideology; the size, age, and composition of the highest courts; or the size, age, and composition of the judiciaries as a whole. Globally, the office of Chief Justice does not appear to conform to path-dependent paradigms; rather, it takes on a distinctly *sui generis* aspect in each of the countries surveyed.

III. The Promise of Judicial Education

What does the survey data tell us about the prospects for a global education program for Chief Justices? To answer this question, we must first define what we mean by "judicial education." In my experience, the term "judicial education" can be disaggregated into at least three analytically distinct functions: information transmission, training, and peer exchange. As I use these terms here, "information transmission" refers to programs designed to enhance the Chief Justices' intellectual development and knowledge of general legal processes (e.g., instruction on new developments in judicial administration or international law), while "training" pro-

61. Wallace, *supra* note 52, at 852-54.

62. See *infra* Appendix 5.

grams prepare judges to perform specific tasks (e.g., budget preparation). Both information transmission and training envision a unidirectional flow of information from educators and trainers to participant Chief Justices. By contrast, "peer exchange" embraces the multidirectional sharing of ideas and experiences among Chief Justices. Peer exchange programs aspire primarily to acquaint Chief Justices with other countries' solutions to common problems, to foster a spirit of judicial cosmopolitanism, and to forge relationships of trust and mutual understanding that transcend jurisdictional divisions. Each of these functions—information transmission, training, and peer exchange—should be analyzed to determine the best learning methodology for Chief Justices and thus improve court systems and promote the rule of law.

As in many other contexts, diversity poses significant challenges and presents valuable opportunities for judicial education. Of the three educational functions I have described, judicial training programs are likely to struggle the most. The disparate survey data indicate that it may be difficult to develop a unitary training curriculum for Chief Justices. Issues that command the constant attention of some Chief Justices will be of little value to others who do not participate in such matters. It would make little sense, for example, to devote an entire conference to judicial discipline or media relations when a sizeable portion of the attendees do not play a significant role in these processes. Even subjects of general interest and applicability, such as administration, may be difficult to address in international training sessions because some Chief Justices command considerably more authority, resources, and experience to perform administrative tasks than their colleagues in other jurisdictions. In short, diversity limits what can be accomplished through international judicial training, and these limitations should be factored into future course planning.

Because there is no universally accepted model for the office of Chief Justice, a homogeneous training curriculum is unlikely to meet the needs of Chief Justices from heterogeneous traditions. Instead, the survey data suggest that global Chief Justice programs will be most effective when two principles are followed. First, rather than concentrate all judicial education at the international level, global resources should be used to facilitate local and regional efforts as well, where training curricula can be tailored to more Chief Justices' unique needs. Second, to the extent education does take place for Chief Justices in larger international settings, the curriculum should either focus on general skills of universal applicability or be flexible enough to permit Chief Justices to pick and choose training modules relevant to their roles.

Judicial educators, however, need not view diversity among Chief Justices as an insurmountable obstacle to the globalization of their judicial education. General principles of effective leadership and administration are universal, and Chief Justices are likely to benefit from education in

these areas despite the significant distinctions in their particular duties.⁶³ In addition, the same philosophical and functional diversity that impedes judicial training also provides an invaluable resource for a different, and perhaps better, educational method: peer exchange. As I have discussed in another article, peer exchange envisions the educator's role as a "facilitator of learning, rather than . . . an authority figure who is the repository of all wisdom" and uses "[t]he experience of the group of learners [a]s the primary resource for . . . teaching."⁶⁴ Peer exchange enables participants to draw from a deep reservoir of experiences and perspectives, enhances participants' control over the learning process, and gives them greater autonomy to draw their own conclusions from the information presented. The distinction between training and peer exchange is particularly relevant here: whereas diversity compromises the effectiveness of judicial training programs, it has the opposite effect under the peer exchange model; the more policies, practices, and perspectives represented in an assembly of Chief Justices, the greater the potential for cross-fertilization of ideas and resources.

Chief Justices benefit from peer exchange in a variety of ways. Newly appointed Chief Justices and Chief Justices from fledgling sovereignties may learn from their colleagues' cautionary experiences and build new traditions based on other countries' models rather than "reinventing the wheel." Where the office of Chief Justice is firmly entrenched in established traditions, peer exchange introduces new strategies for dealing with intractable issues such as court congestion, judicial corruption, and encroachments on judicial independence. Successful experiments in one jurisdiction may be conducive to the cross-fertilization of practices and procedures. Conversely, peer exchange can also help Chief Justices from one country to recognize why certain practices might be appropriate in other countries, but not effective in their own political or cultural context.

The value of a peer exchange methodology is further underscored by the sui generis nature of the Chief Justice's office. Who possesses specialized expertise in the function and potential of the Chief Justice? The obvious answer is one who is or has been a Chief Justice. Who, then, is most qualified to educate Chief Justices on the role of a Chief Justice? The answer is congruent: current and former Chief Justices.

63. See Wallace, *supra* note 13, at 358-59 (arguing that "[t]he more one sets aside teaching local substantive law . . . and focuses more on processes, procedures, and administrative matters, the more generic judicial education becomes").

64. Wallace, *supra* note 52, at 859-60 (internal quotations omitted) (quoting Charles S. Claxton, *Characteristics of Effective Judicial Education Programs*, 76 JUDICATURE 11 (1992)); see also Christine Durham, *Appellate Advocacy as Adult Education*, 2 J. APP. PRAC. & PROCESS 1, 3 (2000) ("Adults bring a lifetime of experience to every learning situation . . . Good adult education takes advantage of this resource and creates opportunities for adults to reflect on and build on their experience."); Paul M. Li, *How Our Judicial Schools Compare to the Rest of the World*, 34 JUDGES' J. 17, 18-19, 47-48 (1995) (explaining that the "peer group model" emphasizes collaboration and "learn[ing]-by-doing").

These principles have been the basis for the longevity of the Conference of Chief Justices of Asia and the Pacific. Now more than two decades old, the Conference has been remarkably successful because it relies on a peer exchange method: each Chief Justice is a teacher and each is a student. Ordinarily, individual Chief Justices or others are assigned to make a brief presentation, outlining the general question of judicial administration to be discussed. The Chief Justices respond in kind, contributing ideas and practices derived from their own personal experience. As the discussion unfolds, the participants' collective experiences become a unique reservoir from which individual Chief Justices can draw lessons and models appropriate to their individual circumstances. International dialogue at fora like the Conference of Chief Justices of Asia and the Pacific cannot substitute for regional education programs, but it can provide a treasure trove of information, experience, and perspectives that regional training programs cannot duplicate. This is a resource that should be cultivated with care.

Conclusion

Although the world's Chief Justices perform similar functions, this comparative study of twenty-seven countries indicates that Chief Justices' approaches to judicial administration, oversight, representation, and other duties vary considerably—and rightfully so. Effective Chief Justices will adapt their efforts to satisfy the unique needs of the highest court and of the judiciary they serve. As judicial education globalizes, educators must also keep in mind that, for Chief Justices, one size will not fit all. Chief Justices from the various nations perform different roles and have different needs; a monolithic training curriculum simply will not do. Instead, international and regional conferences can best assist Chief Justices by facilitating dialogue among Chief Justices—exposing each Chief Justice to new perspectives and approaches to common problems. These comparative perspectives on the office of Chief Justice are not merely of intellectual interest; they are an indispensable resource for Chief Justices engaged in promoting the effective administration of justice and the rule of law.

APPENDIX 1: SURVEY ON THE ROLE AND RESPONSIBILITIES OF THE CHIEF JUSTICE OF THE HIGHEST COURT

1. Country:
2. Name of Chief Justice:
 - b. Number of years served as Chief Justice:
 - c. Number of years on highest court:
 - d. Name of highest court:
 - e. Number of judges on highest court:
 - e. How is the Chief Justice selected?
3. Position of Chief Justice is established by:
 - a. Constitution:
 - b. Statute:
 - c. Other:
4. List the document(s) where power and authority of the Chief Justice are outlined and attach a copy:
5. Does the authority of the Chief Justice extend to courts other than the highest court in the nation?
 - a. Over trial courts?
 - b. Over intermediate appellate courts?
 - c. Describe the authority:
6. Is the Chief Justice responsible for all administration within his or her jurisdiction?
7. In addition to administration, does the Chief Justice decide cases in the same number as other judges of his or her court?
8. Does the Chief Justice have authority to deal with a justice of his or her court who fails to discharge his or her work with reasonable efficiency?
 - a. What is the extent of that authority?
 - b. Does the Chief Justice have the same authority for other appellate courts?
For trial courts?
9. Does the Chief Justice determine the distribution of judicial workload for the court?
 - a. If not, who does?
10. Does the Chief Justice have authority to interfere with another justice's case decision procedure?
11. Does the Chief Justice have oversight authority over the pace of progress of a timely disposition?
 - a. If so, how is it exercised?
12. If a dispute arises between the Chief Justice and another justice, how is it resolved?
13. Did you receive training on how to perform as a Chief Justice before you began service?
 - a. If so, describe the training:
 - b. Answer similarly for specific training since becoming Chief Justice:
14. If you as Chief Justice are responsible for administration, what percent of your time is consumed by administration duties?
 - a. List the administrative responsibilities:
15. Does the Chief Justice have an administrator to assist in administration?
 - b. If so:
 - i. List his or her responsibilities:
 - ii. To whom does the administrator report?
 - iii. List experience and education of the present administrator:

16. Does the Chief Justice or the Supreme Court use committees to which are delegated administrative responsibility, supervision, or oversight?
 - a. How many committees?
 - b. The names of each:
17. Does the Chief Justice speak for the entire judicial institution?
 - a. Must he secure the approval of the court or any other body to announce policy decisions? What body?
18. Does the Chief Justice provide an annual report with statistics?
 - a. To whom is it sent?
19. Is the Chief Justice responsible to communicate with the public?
20. Is the Chief Justice responsible to communicate with the media?
21. Does the Chief Justice have an interest in and a continuing obligation for the welfare and development of judges?
22. Is there a published code of judicial conduct?
 - a. What role does the Chief Justice have in its enforcement?
23. What specific training would be helpful for new Chief Justices?
 - a. What specific training would be helpful for a sitting Chief Justice?
24. Are there rules of judicial conduct that can be enforced against a judge?
 - a. Are they in the Constitution, statute, or rule?
 - i. Please attach a copy.
 - b. What role does the Chief Justice play in the discipline of judges?
25. Does the Chief Justice have power to transfer judges?
 - a. How is this done?
26. Does the Chief Justice hold court meetings to discuss administrative matters? How often?
27. What role does the Chief Justice play in securing an adequate budget for the judiciary?
 - a. What role does the Chief Justice play in being sure the funds are properly spent?
28. Is the Chief Justice involved in developing judicial education programs?
 - a. In what way?
29. Does the Chief Justice have responsibility for space and facilities for the judiciary?
 - a. In what way?
30. Does the Chief Justice play a role in liaison with
 - a. the executive
 - b. the legislative
 - c. the bar
 - d. If so, in what way?

**APPENDIX 2: ADDENDUM TO SURVEY ON THE
ROLE AND RESPONSIBILITIES OF THE
CHIEF JUSTICE OF THE HIGHEST COURT**

31. Country:
32. Name of Chief Justice:
33. If you as Chief Justice have a role representing the judiciary in addition to administrative and judging duties, what percent of your time is consumed by the representational role?
 - a. List representational duties
34. Do you as Chief Justice hold regular council meetings with the head of the subordinate courts to assist in administration?
 - a. If so, how many meetings per year?